

Richard M. Garbarini (RG 5496)  
GARBARINI FITZGERALD P.C.  
250 Park Ave, 7<sup>th</sup> Floor  
New York, New York 10177  
Phone: (212) 300-5358  
Fax: (888) 265-7054

*Attorney for Plaintiff*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
SIMON J. BURCHETT PHOTOGRAPHY, INC.,

Plaintiff,

v.

ALIBABA GROUP (U.S.) INC., ALIBABA GROUP  
HOLDING LIMITED, ALIBABA CLOUD US LLC,  
ALIBABA.COM US E-COMMERCE CORP.,  
ALIBABA.COM U.S. LLC, and ALIBABA.COM  
LLC,

,

Defendants.

Case No.: 23-cv-9853

**ECF CASE**

**COMPLAINT AND JURY  
DEMAND FOR DAMAGES FOR  
COPYRIGHT INFRINGEMENT**

-----  
Plaintiff SIMON J. BURCHETT PHOTOGRAPHY, INC., by and through the undersigned counsel, brings this Complaint and Jury Demand against defendants ALIBABA GROUP HOLDING LIMITED, ALIBABA GROUP (U.S.) INC., ALIBABA CLOUD US LLC, ALIBABA.COM US E-COMMERCE CORP., ALIBABA.COM U.S. LLC, and ALIBABA.COM LLC for damages based on copyright infringement pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101, et seq. (“the Copyright Act” or “Act”) and violations of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-05 (the “DMCA”). Plaintiff alleges below, upon personal knowledge as to itself, and upon information and belief as to other matters so indicated.

### **GENERAL JURISDICTION**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).

### **SPECIFIC JURISDICTION**

2. Plaintiff is the sole owner and creator of two iconic aerial images of the containership the Estelle Maersk (the “Copyrighted Images”).

3. Defendant ALIBABA.COM US E-COMMERCE CORP. with a headquarters located in this Judicial District, and this Court may properly exercise jurisdiction over this defendant.

4. Defendant ALIBAB GROUP HOLDING LIMITED is a Cayman Islands holding company with a headquarters located in Hong Kong.

5. Defendants ALIBABA GROUP (U.S.) INC., ALIBABA CLOUD US LLC, ALIBABA.COM U.S. LLC, and ALIBABA.COM LLC are Delaware companies with a headquarters located in California.

6. Defendants, without license or authority, systematically reproduced, created hundreds of derivatives, distributed, and publicly displayed the Copyrighted Images as the face of defendants’ shipping and logistics division.

7. Defendants’ tortious acts were committed out of state.

8. This Court has personal jurisdiction over defendants because, inter alia, defendants are purposefully and intentionally availing themselves of the privileges of doing business in the State of New York, including in this District. Among other things, (i) defendants have advertised, marketed, promoted, offered for sale, sold, and/or distributed, and continue to advertise, market, promote, offer for sale, sell, distribute, manufacture, and/or import, infringing

products to customers and/or potential customers, including in this District, (ii) defendants' tortious acts giving rise to this lawsuit and harm to plaintiff have occurred and are occurring in the State of New York, including in this District, (iii) defendants have regularly and intentionally done business in this District and sold their infringing products in this District providing defendants with substantial infringing business revenue from this District, (iv) defendants acted with knowledge that their unauthorized use of plaintiff's Copyrighted Image would cause harm to plaintiff in the State of New York and in this District, (v) defendants' customers and/or potential customers reside in the State of New York, including in this District, and (vi) defendants benefit financially from the New York market, including, for example, through sales of products related to defendants' infringing conduct that ultimately occur in New York, including in this District.

9. Further, on information and belief, defendants have sold products for distribution throughout New York and this District and have delivered products into the stream of commerce to purchasers in New York, including in this District which are directly related to defendants' infringing conduct.

10. Defendants never sought a license.

11. Defendants derive substantially all of their revenue from interstate or international commerce.

12. Specific Jurisdiction is conferred over defendant pursuant to CPLR § 302(3)(ii).

13. Alternatively, this Court may exercise personal jurisdiction over defendant ALIBAB GROUP HOLDING LIMITED under Federal Rule of Civil Procedure 4(k)(2).

### **VENUE**

14. At bar, a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1)-(3).

### **DUE PROCESS**

15. There are no due process concerns in light of the fact that defendant committed intentional tortious acts knowing its acts would have consequences in this Judicial District.

### **PARTIES**

16. Plaintiff SIMON J. BURCHETT PHOTOGRAPHY, INC. is a New York corporation with a headquarters located in Manhattan, New York.

17. On information and belief, ALIBABA GROUP HOLDING LIMITED is a Cayman Islands holding company with its principal operating businesses located at 26/F Tower One, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong. On information and belief, Alibaba Group Holding Limited has additional offices in China at 969 West Wen Yi Road, Yu Hang District, Hangzhou 311121, and 699 Wang Shang Road, Binjiang District, Hangzhou 310052. Alibaba Group Holding Limited owns, operates, and sells products through the websites [www.alibaba.com](http://www.alibaba.com) and [www.aliexpress.com](http://www.aliexpress.com).

18. Upon information and belief, defendant ALIBABA GROUP (U.S.) INC. (“ALIBABA US”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 400 South El Camino Real, 4th Floor, San Mateo, California 94402. ALIBABA US may be served through its agent Incorporating Services, LTD, 3500 S Dupont Hwy, Dover, DE 19901

19. Upon information and belief, defendant ALIBABA CLOUD US LLC (“ALIBABA CLOUD”) is a limited liability company organized and existing under the laws of

the State of Delaware with its principal place of business at 525 Almanor Ave., 4<sup>th</sup> Floor, Sunnyvale, CA 94085. ALIBABA CLOUD may be served through its agent Corporation Service Company located at 251 Little Falls Drive, Wilmington, DE 19808.

20. Upon information and belief, defendant ALIBABA.COM U.S. LLC (“ALIBABA LLC”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 400 South El Camino Real, 4th Floor, San Mateo, California 94402. ALIBABA LLC may be served through its agent Corporation Service Company located at 251 Little Falls Drive, Wilmington, DE 19808.

21. Upon information and belief, defendant ALIBABA.COM US E-COMMERCE CORP. (“ALIBABA E-COMMERCE”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 156 W 56th St 3rd Floor, New York, NY 10019. ALIBABA E-COMMERCE may be served through its agent Vistra Incorporations (Delaware) Limited, 1013 Centre Road Suite 403S, Wilmington, DE 19805.

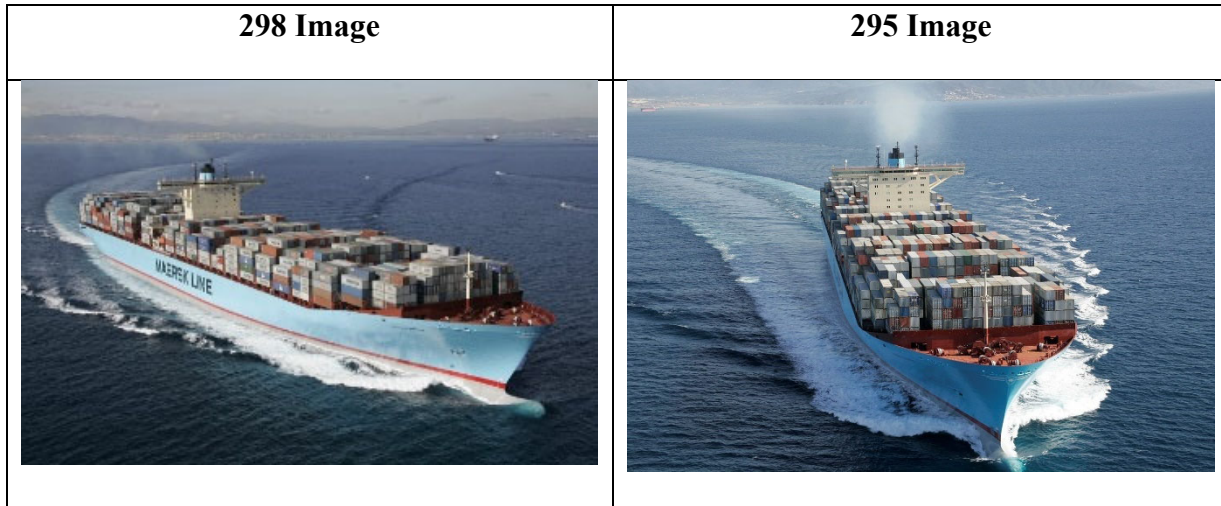
22. Upon information and belief, defendant ALIBABA.COM LLC (“ALIBABA.COM LLC”) is a limited liability company organized and existing under the laws of the State of California with its principal place of business at 400 South El Camino Real, 4th Floor, San Mateo, California 94402. ALIBABA.COM LLC may be served through its agent Corporation Service Company, located at 251 Little Falls Drive, Wilmington, DE 19808.

23. Upon information and belief, at all times material hereto, defendants collectively owned, controlled and operated the website at the URL: <Alibaba.com> (the “Alibaba Website”).

24. Plaintiff is informed and believes, and on that basis avers, that defendants, and each of them, are for-profit entities.

### FACTS

25. Plaintiff is the sole owner, by assignment, of the below copyrighted images titled “\_L4A0298” (the “298 Image”) and “\_L4A0259” (the “259 Image”) of the containership the Estelle Maersk, U.S. Copyright Registration VA 2-019-846. See **Exhibit A**.



26. The 298 Image and the 259 Image are referred to collectively as the “Copyrighted Images”.

27. Plaintiff is owned solely by Simon Burchett, a world-renowned photographer who has been honored with many awards and accolades.

28. Mr. Burchett is accredited as a master photographer by the Master Photographers’ Association (the “MPA”) in England. To become accredited, a photographer must: (i) have professional liability insurance, (ii) show a substantial history of professional work, (iii) provide a detailed client list, (iv) produce a curriculum vitae, and (iv) pass an interview.

29. In July 2019, the 298 Image of the Estelle Maersk at issue here was submitted by Mr. Burchett to the Master Photographers’ Competition. The Master Photographers’ Competition is a national competition conducted by the MPA and is open to all professional photographers. There were over 1,000 Image submitted to the July 2019 Master Photographers’

Competition.

30. Plaintiff's 298 Image won the very prestigious Gold Medal at the July 2019 MPA competition. Previously, the 259 Image won the Silver Medal at the Master Photographers' Association competition in 2018.

### **DEFENDANTS' BUISNESS MODEL**

31. Defendants' Alibaba Website is one of the largest, if not the largest, global eCommerce marketplace.

32. Defendants, however, are far more than just an eCommerce marketplace.

33. In 2009, defendants form an Internet based cloud storage and computing service referred to as "Alibaba Cloud".

34. Defendants describe their Alibaba Cloud service as follows:

[F]ounded in 2009, [Alibaba Cloud] is a global leader in cloud computing and artificial intelligence, providing services to thousands of enterprises, developers, and governments organizations in more than 200 countries and regions. Committed to the success of its customers, Alibaba Cloud provides reliable and secure cloud computing and data processing capabilities as a part of its online solutions. In January 2017, Alibaba Cloud became the official cloud services partner of the Olympics.

35. In 2022, defendants' Alibaba Cloud services generated 8% of defendants' total revenue.

36. Defendants' Alibaba Cloud service was, and is, the storage vehicle for hundreds, perhaps thousands, of unlicensed reproductions and derivatives of the Copyrighted Images.

37. In 2013 defendants formed a subsidiary called Zhejiang Cainiao Supply Chain Management Co. ("Cainiao").

38. Cainiao is part of defendants' monolithic world-wide shipping and logistics operation.

39. A significant portion of the goods purchased on the Alibaba Website are shipped through defendants' shipping and logistics division.

40. Defendants describe Cainiao as follows:

Established in 2013, Cainiao is dedicated to meeting Alibaba Group's logistics vision of fulfilling consumer orders within 24 hours in China and within 72 hours anywhere else in the world.

To realize this vision, Cainiao continues to build and operate a global fulfillment network together with its logistics partners. It offers domestic and international one-stop-shop logistics services and supply chain management solutions, addressing various logistics needs of merchants and consumers at scale.

As of March 31, 2022, Cainiao directly operated nine overseas sorting centers and partnered with over 500 logistics partners to provide fulfillment services globally.

For the fiscal year ended March 31, 2022, Cainiao's daily average cross-border and international package volume exceeded 4.5 million.

Cainiao Network is a business of Alibaba Group.

See: <[www.alibabagroup.com/en-US/about-alibaba-businesses-1489025287453671424](http://www.alibabagroup.com/en-US/about-alibaba-businesses-1489025287453671424)>.

41. According to Bloomberg, Cainiao is involved with 70% of mainland China's deliveries, and its distribution hubs run as large as 37 football fields for a single facility.

42. In 2017, defendants entered into a partnership with the Maersk Line ("Maersk"). Maersk is, and has been, the largest containership company in the world for decades.

43. As per the deal with Maersk, defendants purchase space on Maersk's containerships, and then sell that space to business customers on its Alibaba Website through defendants' "OneTouch" service.

44. Defendants claimed their "One Touch" service reduced dependency on some tasks performed by freight forwarders—middle-men between merchants and shipping lines—and streamlined the export process for merchants.



45. In an interview with Reuters, a Maersk representative claimed users of the Alibaba Website can lock in cargo space on certain routes by pre-paying their deposit to defendants. Freight forwarders' services, such as documentation and customs clearance, can be provided through the OneTouch platform.

46. Defendants' OneTouch platform offers a suite of export services to merchants, including financing and dealing with customs. Defendants' shipping services are the fastest growing unit in defendants' business-to-business divisions and has grown to dominate shipping for goods purchased on the Alibaba Website.

47. Defendants have spent billions of dollars to grow their freight forwarding and logistics division.

48. In September 2020, defendants, through their subsidiary Cainiao, bought a 10.33% stake in Worldwide Logistics Group, one of the world's largest freight forwarders.

49. In October 2021, defendants purchased just over 10% of Singapore-based ocean liner operator Transfar Shipping, which sails between China and the west coast of the U.S.

50. In order to handle the freight from defendants, Transfer agreed in August 2021 to charter container ship Martinique from Zeaborn Ship Management for two to three months, and the Minna from Peter Dohle for five months for \$150,000 per day. Martinique collected cargo in Shanghai, Qingdao and Yantian before heading to Long Beach, California.

51. With the massive expansion of their Cainiao division, defendants migrated from one of, if not the, largest eCommerce marketplace, to one of the world leaders in freight forwarding and logistics.

52. As per defendants' filings with the SEC, its Cainiao division generated nearly eight billion dollars in the 2022 fiscal year.

### THE ALIBABA WEBSITE INFRINGEMENTS

53. Defendants chose plaintiff's Copyrighted Images as the face of their massive freight forwarding and logistics service.

54. Without license or authority, defendants reproduced, created derivatives, distributed, and publicly displayed the Copyrighted Images.

55. All the listings on defendants' Alibaba Website contain a similar format compromised of multiple section. The primary sections are: (i) a picture of the item with unit cost, (ii) product description, (iii) an "About Us" section, and (iv) a shipping section.

56. **Exhibit B** attached hereto is a screenshot of a product listing on the Alibaba Website with an infringing derivative of the 298 Image that was listed on the Alibaba Website days before the date of this Complaint.

57. There are many additional sections that may be included like, (i) samples, (ii) product testing, etc., but each listing contains the aforementioned four sections.

58. Defendants provide unlicensed reproductions and derivatives of the Copyrighted Images to each business that lists on the Alibaba Website.

59. Defendants also provide templates that include unlicensed reproductions and derivatives of the Copyrighted Images to businesses that create listings to be posted on defendants' Alibaba Website.

60. On the date of this Complaint there are thousands, perhaps tens of thousands, of reproductions and derivatives of the Copyrighted Images, particularly the 298 Image, publicly displayed on defendants' Alibaba Website.

61. Each of the unlicensed reproductions and derivatives of the Copyrighted Images on the Alibaba Website originated from defendants.

62. Attached as **Exhibit C** is a representative example of the thousands, perhaps tens of thousands, of listings on the Alibaba Website that contain unlicensed reproductions and derivatives of the Copyrighted Images.

63. Each of the unlicensed reproductions and derivatives of the Copyrighted Images identified in **Exhibit C** are active and available to United States consumers on the date of this Complaint.

64. The thousands, most likely tens of thousands, of infringing reproductions and derivatives on the Alibaba Website are directed to Alibaba's largest market – the United States.

65. In fact, defendants reported that 16.2% of all traffic on the Alibaba Website is from the United States. China represents 15.9% of all traffic, followed by Russia at 3.44%.

66. The sharp fall-off in traffic after the United States and China demonstrates the penetration defendants have made into the United States market.

67. Plaintiff has identified listings from Spain, Italy, China, and Greece with unlicensed reproductions and derivatives of the Copyrighted Images on local Alibaba Websites.

68. Defendants allow access to unlicensed reproductions and derivatives of the Copyrighted Images world-wide to be included in listings of products sold to United States customers.

69. Defendants have infringed plaintiff's exclusive rights to the Copyrighted Images pursuant to 17 U.S.C. § 106 through the systemic infringements present on the Alibaba Website.

#### **ALIBABA CLOUD SERVICE**

70. In 2009, defendants created the Alibaba Cloud service.

71. There are numerous unlicensed reproductions and derivatives of the Copyrighted Images on defendants Alibaba Cloud service.

72. The unlicensed derivatives of the Copyrighted Images created by defendants are made available to the manufacturers and traders that create listings on the Alibaba Website.

73. When new listing is created on the Alibaba Website with the unlicensed reproduction or derivative created by defendants, the listing party can either use defendants' unlicensed derivative or add its own trademark and edit the unlicensed derivative provided.

74. The new unlicensed reproduction or derivative is stored on defendants' Alibaba Cloud service.

75. Defendants also created templates to be used by clients of their Alibaba Website that include unlicensed reproductions and derivatives of the Copyrighted Images.

76. Below, for example, is an unlicensed reproduction of the 259 Image that is made available by defendants.



77. When a listing is created using defendants' unlicensed reproduction, like the one below, the new unlicensed reproduction is stored on defendants' Alibaba Cloud service, and made publicly available. See below:



Located at:

<https://sc01.alicdn.com/kf/Ha3d718166b324fd1977b81ef0584b43fK/238010835/Ha3d718166b324fd1977b81ef0584b43fK.jpg>

78. The above unlicensed reproduction of the 259 Image is associated with the product listings located at the following URLs:

- [www.alibaba.com/product-detail/European-Modern-Design-Interior-Black-Aluminium\\_62225597026.html](http://www.alibaba.com/product-detail/European-Modern-Design-Interior-Black-Aluminium_62225597026.html).
- [www.alibaba.com/product-detail/Hot-sales-new-style-MDF-Door\\_62141945113.html](http://www.alibaba.com/product-detail/Hot-sales-new-style-MDF-Door_62141945113.html).

79. When a listing is created using defendants' unlicensed derivative of the Copyrighted Images, that new unlicensed derivative is stored and publicly available on defendants' Alibaba Cloud service.

80. The new unlicensed derivative of the Copyrighted Image is then linked to the listing created on the Alibaba Website.

81. The listing party can add their logo to the unlicensed derivative of the 298 Image provided by defendants, and, once again, that new unlicensed derivative is then stored on defendants' Alibaba Cloud service. See, e.g., below.



Locate at: <<https://sc04.alicdn.com/kf/H086deb48e6cb4db7860a76cce20e973e2.jpg>>.

82. Freight agencies create listings on the Alibaba Website with unlicensed derivatives of the 298 Image provided by defendants, and the new images created by the freight companies are stored on defendants Alibaba Cloud Service. See, e.g., below:



Located at: [http://sc02.alicdn.com/kf/HTB1B\\_bLOVXXXXCXXFXXq6xXFXXXb/Shipping-cost-from-China-to-PORT-ELIZABETH.jpg](http://sc02.alicdn.com/kf/HTB1B_bLOVXXXXCXXFXXq6xXFXXXb/Shipping-cost-from-China-to-PORT-ELIZABETH.jpg);  
<https://sc04.alicdn.com/kf/Hba4b64ff1a694874800bf3d752c0bd43E.jpg>.

83. At least one business created a listing on the Alibaba Website with an unlicensed derivative of the 298 Image as the thumbnail for their corporate video. See thumbnail below:



Thumbnail image located at:  
[https://img.alicdn.com/imgextra/i1/6000000000849/O1CN01ZTNgVt1I8stp4PG3N\\_%21%21600000000849-0-tbvideo.jpg](https://img.alicdn.com/imgextra/i1/6000000000849/O1CN01ZTNgVt1I8stp4PG3N_%21%21600000000849-0-tbvideo.jpg).

84. On the date of this Complaint, the preceding unlicensed derivative is the thumbnail on the corporate video for the following active products.

- [www.alibaba.com/product-detail/Brown-Black-Party-Wedding-Suit-](http://www.alibaba.com/product-detail/Brown-Black-Party-Wedding-Suit-)

- action\_1600153402298.html - Uploaded on Aug 23, 2023
- www.alibaba.com/product-detail/Big-Size-13-Mens-Oxford-Shoes\_1600153487665.html - Uploaded on May 25, 2023
- www.alibaba.com/product-detail/Brand-Italian-Mens-derby-shoes-luxury\_1600153015280.html - Uploaded on Dec 21, 2022.

85. Defendants provide the material support for the thousands of infringing listings on its Alibaba Website, which are stored on its Alibaba Cloud service, by providing and making available the unlicensed reproductions and derivatives of the Copyrighted Images.

86. Attached as **Exhibit D** is a representative sample of the hundreds, perhaps thousands, of unlicensed reproductions and derivatives of the Copyrighted Images stored and publicly displayed on defendants' Alibaba Cloud service.

87. The "alicdn" in the URLs identified in **Exhibit D** indicates the unlicensed image is stored and publicly displayed on the Alibaba Cloud service.

88. Each of the unlicensed reproductions and derivatives of the Copyrighted Images identified in **Exhibit D** are active and available to United States consumers on the date of this Complaint.

89. Even after the product associated with an unlicensed derivative of the Copyrighted Images is no longer available on the Alibaba Website, the unlicensed derivative remains, and is publicly displayed, on defendants' Alibaba Cloud service.

90. Each unlicensed reproductions and derivatives of the Copyrighted Images identified in **Exhibit D** have been linked to at least one product, and most often many products, on the Alibaba Website in the three years prior to the filing of the within Complaint.

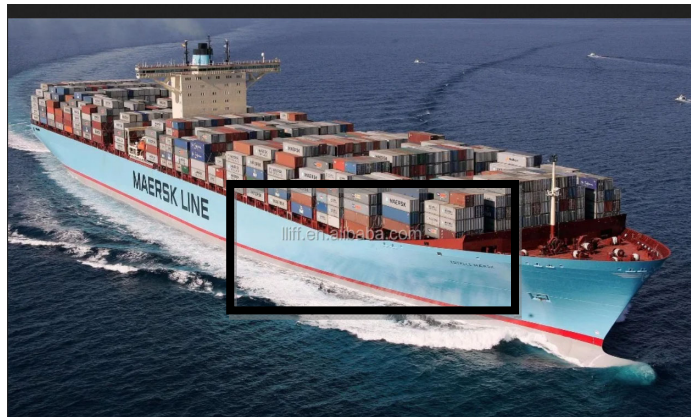
91. The unlicensed reproductions and derivatives of the Copyrighted Images publicly available and stored in the Alibaba Cloud service appear(ed) in thousands, perhaps tens of thousands, listings available and viewed in the United States on the Alibaba Website.



92. Plaintiff has identified over three hundred (300) unlicensed reproductions and derivatives of the Copyrighted Images which are currently publicly displayed on defendants' Alibaba Cloud service, and thousands of products on the Alibaba Website associated with the unlicensed reproductions and derivatives.

### **DEFENDANTS' FALSE WATERMARKD AND TEMPLATES**

93. Defendants also mark many of the unlicensed reproductions and derivatives with a watermark falsely indicating defendants are the owners of the Copyrighted Images. See, e.g., below.



94. The below is offered by defendants for posting on the Alibaba Website and contains a watermark with a false designation indicating defendants own the 298 Image.





Located at:

<http://sc01.alicdn.com/kf/HTB1j7q5KXXXXXXVXpXXq6xXFXXXG/200669148/HTB1j7q5KXXXXXXVXpXXq6xXFXXXG.jpg>.

95. The preceding template with the unlicensed derivative of the 298 Image is associated with twenty-two listings on the Alibaba Website, listed by multiple companies. See below:

- [www.alibaba.com/product-detail/custom-design-self-heating-dry-dried\\_60517009999.html](http://www.alibaba.com/product-detail/custom-design-self-heating-dry-dried_60517009999.html)
- [www.alibaba.com/product-detail/smell-proof-medical-pharmacy-use-custom\\_60473909271.html](http://www.alibaba.com/product-detail/smell-proof-medical-pharmacy-use-custom_60473909271.html)
- [www.alibaba.com/product-detail/14-oz-baby-drinking-pouches-drink\\_1345470464.html](http://www.alibaba.com/product-detail/14-oz-baby-drinking-pouches-drink_1345470464.html)
- [www.alibaba.com/product-detail/custom-printed-side-gusset-pet-dog\\_60563640915.html](http://www.alibaba.com/product-detail/custom-printed-side-gusset-pet-dog_60563640915.html)
- [www.alibaba.com/product-detail/custom-printed-clear-vacuum-sealed-food\\_60002288827.html](http://www.alibaba.com/product-detail/custom-printed-clear-vacuum-sealed-food_60002288827.html)
- [www.alibaba.com/product-detail/custom-logo-plastic-square-flat-block\\_60666516743.html](http://www.alibaba.com/product-detail/custom-logo-plastic-square-flat-block_60666516743.html)
- [www.alibaba.com/product-detail/resealable-ziplock-pouch-smell-proof-fertilizer\\_60661089327.html](http://www.alibaba.com/product-detail/resealable-ziplock-pouch-smell-proof-fertilizer_60661089327.html)
- [www.alibaba.com/product-detail/Custom-stand-up-chia-seed-packaging\\_60550462536.html](http://www.alibaba.com/product-detail/Custom-stand-up-chia-seed-packaging_60550462536.html)
- [www.alibaba.com/product-detail/custom-design-laminated-aluminum-foil-facial\\_60520323923.html](http://www.alibaba.com/product-detail/custom-design-laminated-aluminum-foil-facial_60520323923.html)
- [www.alibaba.com/product-detail/custom-logo-wholesale-aluminum-foil-three\\_60519522727.html](http://www.alibaba.com/product-detail/custom-logo-wholesale-aluminum-foil-three_60519522727.html)
- [www.alibaba.com/product-detail/Glossy-matte-plastic-stand-up-ziplock\\_60700252823.html](http://www.alibaba.com/product-detail/Glossy-matte-plastic-stand-up-ziplock_60700252823.html)
- [www.alibaba.com/product-detail/customized-logo-soft-plastic-bait-bags\\_745805853.html](http://www.alibaba.com/product-detail/customized-logo-soft-plastic-bait-bags_745805853.html)
- [www.alibaba.com/product-detail/custom-packaging-bags-for-apparel-wholesale\\_1990175865.html](http://www.alibaba.com/product-detail/custom-packaging-bags-for-apparel-wholesale_1990175865.html)
- [www.alibaba.com/product-detail/2016-three-side-seal-bag-mobile\\_60451359927.html](http://www.alibaba.com/product-detail/2016-three-side-seal-bag-mobile_60451359927.html)
- [www.alibaba.com/product-detail/coffee-tea-side-gusset-with-your\\_60521191063.html](http://www.alibaba.com/product-detail/coffee-tea-side-gusset-with-your_60521191063.html)
- [www.alibaba.com/product-detail/customized-logo-soft-plastic-bait-bags\\_745805853.html](http://www.alibaba.com/product-detail/customized-logo-soft-plastic-bait-bags_745805853.html)
- [www.alibaba.com/product-detail/matte-black-kraft-paper-laminated-mylar\\_60577354874.html](http://www.alibaba.com/product-detail/matte-black-kraft-paper-laminated-mylar_60577354874.html)
- [www.alibaba.com/product-detail/custom-design-stand-up-plastic-laundry\\_60516587133.html](http://www.alibaba.com/product-detail/custom-design-stand-up-plastic-laundry_60516587133.html)
- [www.alibaba.com/product-detail/coffee-tea-side-gusset-with-your\\_60521191063.html](http://www.alibaba.com/product-detail/coffee-tea-side-gusset-with-your_60521191063.html)
- [www.alibaba.com/product-detail/vivid-printing-effect-stand-up-zipper\\_60541722665.html](http://www.alibaba.com/product-detail/vivid-printing-effect-stand-up-zipper_60541722665.html)
- [www.alibaba.com/product-detail/custom-printed-clear-vacuum-sealed-](http://www.alibaba.com/product-detail/custom-printed-clear-vacuum-sealed-)

food\_60002288827.html

- [www.alibaba.com/product-detail/clear-window-stand-up-8-side\\_60019694758.html](http://www.alibaba.com/product-detail/clear-window-stand-up-8-side_60019694758.html).


96. Below is an example of the generic listing template offered by defendants that allows the lister to insert its “company information” in the designated spot. See below:





97. The preceding example can be found at:

- <https://sc01.alicdn.com/kf/HTB1vfoFRpXXXXb8XVXXq6xXFXXxD/200334765/HTB1vfoFRpXXXXb8XVXXq6xXFXXxD.jpg>, and
- <https://sc02.alicdn.com/kf/HTB1JQJaRFXXXXbGXXXXq6xXFXXXx/20033.4765/HTB1JQJaRFXXXXbGXXXXq6xXFXXXx.jpg>.

98. Another example of a shipping template created by defendants is below.

Unlicensed Derivative	URL Where Unlicensed Derivative Can be Found on Defendants' Alibaba Cloud
<p><b>PACKAGING &amp; SHIPPING</b> <span style="float: right;">Inflatables</span></p> 	<p><a href="https://sc01.alicdn.com/kf/HTB1HULgmrBKNjSZFjq6A_SpXaC/200310482/HTB1HULgmrBKNjSZFjq6A_SpXaC.jpg">https://sc01.alicdn.com/kf/HTB1HULgmrBKNjSZFjq6A_SpXaC/200310482/HTB1HULgmrBKNjSZFjq6A_SpXaC.jpg</a></p>

	<p><a href="https://sc02.alicdn.com/kf/HTB1KQxBXA95K1Rjt_bi760zbVXaf/234659230/HTB1KQxBXA95K1Rjt_bi760zbVXaf.png">https://sc02.alicdn.com/kf/HTB1KQxBXA95K1Rjt_bi760zbVXaf/234659230/HTB1KQxBXA95K1Rjt_bi760zbVXaf.png</a></p> <p>Watermark: Gzhuatong.en.alibaba.com</p>
	<p><a href="https://sc02.alicdn.com/kf/HTB1wnM0ij3z9KJjy0Fmq6xiwXXav/227766777/HTB1wnM0ij3z9KJjy0Fmq6xiwXXav.jpg">https://sc02.alicdn.com/kf/HTB1wnM0ij3z9KJjy0Fmq6xiwXXav/227766777/HTB1wnM0ij3z9KJjy0Fmq6xiwXXav.jpg</a></p>





<https://sc02.alicdn.com/kf/HTB1gpxGbL6TBKNjSZJiq6zKVFXaF/200334765/HTB1gpxGbL6TBKNjSZJiq6zKVFXaF.jpg>



<https://sc02.alicdn.com/kf/HTB1wnM0ij3z9KJjy0Fmq6xiwXXav/227766777/HTB1wnM0ij3z9KJjy0Fmq6xiwXXav.jpg>



 <p><b>SEA EXPRESS AIR TRANSPORT</b></p> <p><b>TIP:</b>  1. PLEASE TELL US YOUR DETAILED ADDRESS FIRSTLY.  2. THEN CHOOSE DELIVERY BY SEA, BY AIR CARGO OR BY EXPRESS.  3. BY SEA: FOB/CIF-TO SEA PORT  BY AIR CARGO-TO AIR PORT  BY EXPRESS:TNT/FEDEX/DHL/SF/SO ON-DOOR TO DOOR  4. NOTICE: DELIVERY BY SEA AND BY AIR CARGO NEED TO DO CUSTOMS CLEARANCE.</p>	<p><a href="https://sc02.alicdn.com/kf/HTB1gpxGbL6TBKNjSZJiq6zKVFXaF/200334765/HTB1gpxGbL6TBKNjSZJiq6zKVFXaF.jpg">https://sc02.alicdn.com/kf/HTB1gpxGbL6TBKNjSZJiq6zKVFXaF/200334765/HTB1gpxGbL6TBKNjSZJiq6zKVFXaF.jpg</a></p>
 <p><b>SEA EXPRESS AIR TRANSPORT</b></p> <p><b>TIP:</b>  1. PLEASE TELL US YOUR DETAILED ADDRESS FIRSTLY.  2. THEN CHOOSE DELIVERY BY SEA, BY AIR CARGO OR BY EXPRESS.  3. BY SEA: FOB/CIF-TO SEA PORT  BY AIR CARGO-TO AIR PORT  BY EXPRESS:TNT/FEDEX/DHL/SF/SO ON-DOOR TO DOOR  4. NOTICE: DELIVERY BY SEA AND BY AIR CARGO NEED TO DO CUSTOMS CLEARANCE.</p>	<p><a href="https://sc02.alicdn.com/kf/HTB1LoCwSVXXXXaKXpXXq6xXFXXXP/200334765/HTB1LoCwSVXXXXaKXpXXq6xXFXXXP.jpg">https://sc02.alicdn.com/kf/HTB1LoCwSVXXXXaKXpXXq6xXFXXXP/200334765/HTB1LoCwSVXXXXaKXpXXq6xXFXXXP.jpg</a></p>



99. The preceding eight (8) reproductions of defendants' unlicensed derivative of the 298 Image are associated with seven (7) different companies, and twenty-one (21) different product listings.

### THE SYSTEMIC INFRINGEMENT BY DEFENDANTS OF THE COPYRIGHTED IMAGES

100. The below unlicensed derivative of the 298 Image was created by defendants and offered to businesses listing on its Alibaba Website.



101. The above unlicensed derivative of the 298 Image is designated by defendants as the "6xXFXXX" image.

102. Often, when a business creates a listing for posting on the Alibaba Website using this unlicensed derivative of the 298 Image; the “6xXfXXX” designation appears in the URL for the new unlicensed derivative that is publicly posted on the Alibaba Website and stored in defendants’ Alibaba Cloud service.

103. Below is just a small sample of the URLs found in defendants Alibaba Cloud service with derivatives created by third-parties using defendants’ 6xXFXXX unlicensed derivative of the 298 Image.

- <https://sc02.alicdn.com/kf/HTB1aiHtIpXXXXaWFXFXq6xXFXXXS/222475801/HTB1aiHtIpXXXXaWFXFXq6xXFXXXS.jpg>
- <https://sc04.alicdn.com/kf/Hcee7b016f4764ae28b40114d69514898T.jpg>.
- <http://sc01.alicdn.com/kf/HTB1TRfXHpXXXXbCaXXXq6xXFXXXm/220869456/HTB1TRfXHpXXXXbCaXXXq6xXFXXXm.jpg>.
- <http://sc01.alicdn.com/kf/HTB1JFjaMXXXXXcJFXFXq6xXFXXXN/door-to-door-pakistan-cargo-services.jpg>
- <https://sc02.alicdn.com/kf/HTB1aiHtIpXXXXaWFXFXq6xXFXXXS/222475801/HT1gMO0FGNcXXagOFbXt.jpg>.
- <http://sc01.alicdn.com/kf/HTB1kKAaGFXXXXc7aXXXq6xXFXXXy/202147852/HTB1kKAaGFXXXXc7aXXXq6xXFXXXy.jpg>.
- <http://sc01.alicdn.com/kf/HTB1O4FhQXXXXXc2XXXXq6xXFXXXD/221426096/HTB1O4FhQXXXXXc2XXXXq6xXFXXXD.jpg>.
- <https://sc02.alicdn.com/kf/HTB10wtsRpXXXXaTapXXq6xXFXXX3/200607876/HTB10wtsRpXXXXaTapXXq6xXFXXX3.jpg>.
- <https://sc01.alicdn.com/kf/HTB1MrkfLVXXXXbzXXXX760XFXXXm/223431234/HTB1MrkfLVXXXXbzXXXX760XFXXXm.png>.
- <https://sc01.alicdn.com/kf/HTB1UFTCPFXXXXbmXFXq6xXFXXXv/220203071/HTB1UFTCPFXXXXbmXFXq6xXFXXXv.jpg>
- <https://sc01.alicdn.com/kf/HTB1Du.UKpXXXXbSXpXXq6xXFXXXw/226230958/HTB1Du.UKpXXXXbSXpXXq6xXFXXXw.jpg>.
- <https://sc01.alicdn.com/kf/HTB1iuIjGXXXXXaZXXXXq6xXFXXXD/200186605/HTB1iuIjGXXXXXaZXXXXq6xXFXXXD.jpg>.
- [https://sc01.alicdn.com/kf/HTB1\\_T6PPFXXXXa5XVXXq6xXFXXX1/221453532/HTB1\\_T6PPFXXXXa5XVXXq6xXFXXX1.jpg](https://sc01.alicdn.com/kf/HTB1_T6PPFXXXXa5XVXXq6xXFXXX1/221453532/HTB1_T6PPFXXXXa5XVXXq6xXFXXX1.jpg).
- <http://sc01.alicdn.com/kf/HTB1UTtvSXXXXXcgXXXXq6xXFXXXm/31901/HTB1UTtvSXXXXXcgXXXXq6xXFXXXm.jpg>.
- <http://sc01.alicdn.com/kf/HTB1TRfXHpXXXXbCaXXXq6xXFXXXm/220869456/HTB1TRfXHpXXXXbCaXXXq6xXFXXXm.jpg>.
- Located at: <http://sc01.alicdn.com/kf/HTB1JFjaMXXXXXcJFXFXq6xXFXXXN/door-to-door-pakistan-cargo-services.jpg>.
- <https://sc02.alicdn.com/kf/HTB1aiHtIpXXXXaWFXFXq6xXFXXXS/222475801/HTB1aiHtIpXXXXaWFXFXq6xXFXXXS.jpg>.
- <https://sc02.alicdn.com/kf/HTB1aiHtIpXXXXaWFXFXq6xXFXXXS/222475801/HT1gMO0FGNcXXagOFbXt.jpg>.

- <http://sc01.alicdn.com/kf/HTB1kKAaGFXXXXc7aXXXq6xXFXXXy/202147852/HTB1kKAaGFXXXXc7aXXXq6xXFXXXy.jpg>.
- <https://sc02.alicdn.com/kf/HTB10wtsRpXXXXaTapXXq6xXFXXX3/200607876/HTB10wtsRpXXXXaTapXXq6xXFXXX3.jpg>.
- <https://sc01.alicdn.com/kf/HTB1MrkfLVXXXXbzXXXX760XFXXXm/223431234/HTB1MrkfLVXXXXbzXXXX760XFXXXm.png>.

104. Each of the above-unlicensed derivatives of the 298 Image which are currently active of defendants' Alibaba Cloud service are associated, or have been associated, with at least one product on the Alibaba Website. Most of the identified unlicensed derivatives above are associated with many products. In fact, several are associated with twenty to thirty products.

105. There are also scores of unlicensed 6xXFXXX derivative of the 298 Image which do not include the 6xXFXXX designation.

106. For example, below is one of the unlicensed derivatives of the 298 Image which is publicly displayed on defendants' Alibaba Cloud on the date of this Complaint.



Located at:

[https://img.alicdn.com/imgextra/i1/60000000000849/O1CN01ZTNgVt1I8stp4PG3N\\_%21%21600000000849-0-tbvideo.jpg](https://img.alicdn.com/imgextra/i1/60000000000849/O1CN01ZTNgVt1I8stp4PG3N_%21%21600000000849-0-tbvideo.jpg).

107. The unlicensed derivative above appears in the following listings on the Alibaba Website:

- [www.alibaba.com/product-detail/Brown-Black-Party-Wedding-Suit-action\\_1600153402298.html](http://www.alibaba.com/product-detail/Brown-Black-Party-Wedding-Suit-action_1600153402298.html)
- [www.alibaba.com/product-detail/Big-Size-13-Mens-Oxford-Shoes\\_1600153487665.html](http://www.alibaba.com/product-detail/Big-Size-13-Mens-Oxford-Shoes_1600153487665.html)
- [www.alibaba.com/product-detail/Brand-Italian-Mens-derby-shoes-luxury\\_1600153015280.html](http://www.alibaba.com/product-detail/Brand-Italian-Mens-derby-shoes-luxury_1600153015280.html).

108. This identical unlicensed derivative does not bear the 6xXFXXX designation.



109. As for another example, below is an unlicensed derivative of the 298 Image that appears with other images offered by defendants.



Located at:

<https://sc01.alicdn.com/kf/HTB1wgKvc.F7MKJjSZFL763MBVXa4/226528583/HTB1wgKvc.F7MKJjSZFL763MBVXa4.png>.

110. The above unlicensed derivative appears in listings for products on the Alibaba Website at the following links:

- [www.alibaba.com/product-detail/Custom-Made-OEM-Self-Color-Metal\\_60586575112.html](http://www.alibaba.com/product-detail/Custom-Made-OEM-Self-Color-Metal_60586575112.html)
- [www.alibaba.com/product-detail/custom-auto-part-cnc-machining-gear\\_60524164920.html](http://www.alibaba.com/product-detail/custom-auto-part-cnc-machining-gear_60524164920.html)
- [www.alibaba.com/product-detail/planetary-gear-sleeve-and-gear-ring\\_60524017230.html](http://www.alibaba.com/product-detail/planetary-gear-sleeve-and-gear-ring_60524017230.html)
- [www.alibaba.com/product-detail/automotive-part-customized-machining-part-spur\\_60485947828.html](http://www.alibaba.com/product-detail/automotive-part-customized-machining-part-spur_60485947828.html)
- [www.alibaba.com/product-detail/planetary-carriers-for-transmission-system\\_60419934567.html](http://www.alibaba.com/product-detail/planetary-carriers-for-transmission-system_60419934567.html)
- [www.alibaba.com/product-detail/automotive-part-transmission-machining-part-spur\\_60486266030.html](http://www.alibaba.com/product-detail/automotive-part-transmission-machining-part-spur_60486266030.html)
- [www.alibaba.com/product-detail/transmission-gears-of-large-sized-tractor\\_60420010321.html](http://www.alibaba.com/product-detail/transmission-gears-of-large-sized-tractor_60420010321.html)
- [www.alibaba.com/product-detail/planetary-gear-sleeve-for-automobile\\_60420275860.html](http://www.alibaba.com/product-detail/planetary-gear-sleeve-for-automobile_60420275860.html)
- [www.alibaba.com/product-detail/planetary-gear-sleeve-and-gear-ring\\_60420428271.html](http://www.alibaba.com/product-detail/planetary-gear-sleeve-and-gear-ring_60420428271.html)
- [www.alibaba.com/product-detail/automotive-part-customized-spur-gear-shaft\\_60485342003.html](http://www.alibaba.com/product-detail/automotive-part-customized-spur-gear-shaft_60485342003.html)
- [www.alibaba.com/product-detail/transmission-gears-for-transplanter\\_60420284665.html](http://www.alibaba.com/product-detail/transmission-gears-for-transplanter_60420284665.html)
- [www.alibaba.com/product-detail/gear-and-shaft-of-transmission-for\\_60420175676.html](http://www.alibaba.com/product-detail/gear-and-shaft-of-transmission-for_60420175676.html)
- [www.alibaba.com/product-detail/planetary-gear-sleeve-and-gear-ring\\_60420428271.html](http://www.alibaba.com/product-detail/planetary-gear-sleeve-and-gear-ring_60420428271.html)
- [www.alibaba.com/product-detail/transmission-gears-for-heavy-truck\\_60419919319.html](http://www.alibaba.com/product-detail/transmission-gears-for-heavy-truck_60419919319.html)
- [www.alibaba.com/product-detail/transmission-gear-for-light-bus-and\\_60419539139.html](http://www.alibaba.com/product-detail/transmission-gear-for-light-bus-and_60419539139.html)
- [www.alibaba.com/product-detail/planetary-gears-and-sun-gears-for\\_60439699230.html](http://www.alibaba.com/product-detail/planetary-gears-and-sun-gears-for_60439699230.html)
- [www.alibaba.com/product-detail/synchronizers-of-tansmission-for-automotive\\_60419958394.html](http://www.alibaba.com/product-detail/synchronizers-of-tansmission-for-automotive_60419958394.html)
- [www.alibaba.com/product-detail/planetary-gear-sleeve-for-automobile\\_60420275860.html](http://www.alibaba.com/product-detail/planetary-gear-sleeve-for-automobile_60420275860.html)
- [www.alibaba.com/product-detail/winch-part-and-transmission-gears-](http://www.alibaba.com/product-detail/winch-part-and-transmission-gears-)

for\_60419396326.html

- [www.alibaba.com/product-detail/transmission-gears-for-medium-sized-tractor\\_60420836222.html](http://www.alibaba.com/product-detail/transmission-gears-for-medium-sized-tractor_60420836222.html)
- [www.alibaba.com/product-detail/professional-customized-crown-wheel-and-pinion\\_60518033686.html](http://www.alibaba.com/product-detail/professional-customized-crown-wheel-and-pinion_60518033686.html)
- [www.alibaba.com/product-detail/New-Holland-large-sized-tractor-crown\\_60522204880.html](http://www.alibaba.com/product-detail/New-Holland-large-sized-tractor-crown_60522204880.html).

111. Again, his identical unlicensed derivative does not bear the 6xXFFXX designation.

112. Defendants freight moving partner ZIM Logistics has an advertisement on the Alibaba Website an unlicensed derivate of the 298 Image. ZIM Logistics has its own containerships, so the “Maersk Line” was removed from the side of the vessel depicted in the unlicensed 298 Image below.



Located at: <https://sc04.alicdn.com/kf/H27e4901f1f964f5e921827755dabce02N.jpg>.

113. Defendant also created a template an unlicensed derivative of the 298 Image to be used by business creating listings that offer the “Fulfillment by Amazon” product. See below



Located at: <https://sc04.alicdn.com/kf/HTB1tzW7XynrK1RjSsziq6xptpXad.jpg>.

114. The above template has been used in scores of listings identified by plaintiff.

115. Defendants, without license or authority, incorporated a derivative of the 298 Image with an advertisement for its shipping service.



Located at: <https://sc04.alicdn.com/kf/H1c37a7caef2747a482a0f1054a915128u.jpg>.

116. Defendants have advertised their shipping services on other websites like <[www.made-in-cjina.com](http://www.made-in-cjina.com)> with an unlicensed derivative of the 298 Image.

117. The systemic infringement of the Copyrighted Images by defendants has made their unlicensed reproductions and derivatives ubiquitous on the Alibaba Website and on defendants' Alibaba Cloud service.

118. Defendants cannot possibly claim the unlicensed reproductions and derivatives of the Copyrighted Images found in thousands, perhaps tens of thousands, of listings, posted by hundreds, perhaps thousands, of businesses, in multiple countries, were somehow independently created using the same unlicensed reproductions and derivatives of the Copyrighted Images.

119. Clearly, defendants entered into a partnership with Maersk for their freight

forwarding and logistics division, and chose plaintiff's Copyrighted Images of the containership the Estelle Maersk as the face of their multi-billion dollar division.

120. Further, defendants have no stated DMCA policy, DMCA agent, or repeat infringer policy and may not invoke the safe-harbor provisions of the DMCA.

121. Regardless, the infringing content on the Alibaba Website and on the Alibaba Cloud was created, made available, and uploaded by defendants.

122. Defendants violated plaintiff's exclusive rights pursuant to 17 U.S.C. § 106 by reproducing, creating derivatives, distributing, and publicly displaying plaintiff's Copyrighted Images without a license.

#### **NOTICE TO DEFENDANTS**

123. On January 18, 2022, after plaintiff first discovered defendants systemic infringement of his Copyrighted Images, plaintiff, through counsel, served a demand on defendants to cease and desist. See **Exhibit E**.

124. Defendants ignored the demand to cease-and-desist, and continued their infringing conduct unfettered.

125. Defendants were served with a second demand to cease-and-desist on October 30, 2023. See **Exhibit F**.

126. Again, Defendants elected to ignore the cease-and-desist and continued to infringe.

127. Defendants were served with third demand to cease-and-desist, and a draft copy of the within Complaint on November 5, 2023. See **Exhibit G**.

128. Again, defendants elected to ignore the cease-and-desist and continued to infringe.

129. One additional demand was on defendants, which, again, was ignored.

130. As of the date of this Complaint, defendants have taken no steps to cease their infringing conduct.

131. In fact, unlicensed reproductions and derivatives of the Copyrighted Images continue to be used by defendants' clients on the Alibaba Website.

132. After the first demand was served on defendants on January 18, 2022, there have been thousands of listings on defendants Alibaba Website with unlicensed reproductions and derivatives of the Copyrighted Images.

133. Defendants advertised their freight forwarding division on [www.made-in-china.com](http://www.made-in-china.com) in the year preceding this Complaint.

134. It is readily apparent the defendants have no interest in complying with their duties under the Copyright Act and will not stop their infringing conduct.

135. Should plaintiff elect a statutory damage award pursuant to 17 U.S.C. § 504(c)(2), only an award at the very top of the range will serve to stop defendants from blatantly violating plaintiff's exclusive rights to the Copyrighted Images.

### **DMCA VIOLATIONS**

136. Plaintiff always distributes its images, including the Copyrighted Images, with embedded copyright management information ("CMI") in the metadata that includes plaintiff's name, website, and image name, along with technical specifications.

137. Defendants removed all CMI associated with the Copyrighted Images prior to their unlicensed reproduction, distribution, and public display.

138. Defendants removed the CMI with the intent to cover their acts of infringement and failed to correct the CMI after notice.

139. Defendants have been put on notice, numerous times, that plaintiff is the owner of

the Copyrighted Image.

140. Defendants have not corrected the CMI on a single unlicensed Image.

141. Moreover, many of the unlicensed derivatives on defendants' Alibaba Website and stored in defendants' Alibaba Cloud service bear a watermark indicating the unlicensed reproductions and derivatives are owned by defendants.

142. This false designation of ownership is a violation of Section 1202 of the DMCA.

143. The failure to correct the CMI after notice is also a violation of Section 1202 of the DMCA.

144. The removal of plaintiff's CMI from each unlicensed reproduction and derivative is a violation of Section 1202 of the DMCA.

145. Plaintiff also disables the right-click copy function on its images prior to distribution.

146. Defendants removed the copyright protection system and enabled the right-click copy function.

147. Defendants have committed hundreds, likely thousands, of violations of 17 U.S.C. §§ 1201-02 – the DMCA. Plaintiff is entitled to up to \$25,000 for each violation of the DMCA pursuant to Section 1203 of the DMCA, plus its reasonable attorneys' fees and costs occurred in this matter.

**FIRST CLAIM FOR RELIEF  
COPYRIGHT INFRINGEMENT**

148. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

149. It cannot be disputed that the plaintiff has a valid, registered copyrights, and owns all rights to the Copyrighted Images.

150. Defendants, without license or authority from plaintiff, reproduced, created a derivative work, publicly displayed, and/or distributed plaintiff's Copyrighted Image.

151. Defendants did so solely for the purpose of commercial gain.

152. Defendants refused to cease-and-desist after multiple demands from plaintiff's counsel.

153. Should plaintiff elect an award of statutory damages, only an award at the top of the statutory scale will serve as a deterrent to defendants.

154. At all times relevant to this Complaint, defendants' use of the Copyrighted Images was not for criticism, comment, news reporting, teaching, scholarship, or research.

155. At all times relevant to this Complaint, defendants' use was not transformative.

156. Defendants elected to reproduce, distribute, and/or publicly display plaintiff's Copyrighted Images, using the entirety of each image, without a license.

157. As a direct and proximate result of defendants' infringement of plaintiff's exclusive rights to the Copyrighted Images as set forth in Section 106 of the Act, plaintiff has incurred damages, and requests an award of plaintiff's actual damages, and defendants' profits in excess of plaintiff's actual damages, plus the reasonable attorneys' fees and costs incurred in this action. Plaintiff may also elect to recover two statutory damage awards. Defendants' acts of entitle plaintiff to an enhanced statutory damage award of up to \$150,000 pursuant to 17 U.S.C. § 504(c)(2).

**SECOND CLAIM FOR RELIEF  
CONTRIBUTORY COPYRIGHT INFRINGEMENT**

158. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

159. Defendants knew or had reason to know of the infringing activity by hundreds,

perhaps thousands, of third-party infringers, and intentionally induced or materially contributed to that infringing activity.

160. Defendants materially contributed to thousands of unlicensed and infringing reproductions and derivatives of the Copyrighted Images being posted to their Alibaba Website by hundreds of third-party infringers.

161. Defendants induced the infringing activity of the third-party infringers by encouraging the use of the unlicensed images and providing infringing templates for the third-party infringers.

162. Defendants provided the unlicensed reproductions and derivatives of the Copyrighted Images to the third-party infringers, encouraged the posting of the unlicensed images, and stored the unlicensed images.

163. Defendants even made the unlicensed reproductions and derivatives created by the third-party infringers available to the third-party infringers for future postings

164. As a direct and proximate result of defendants' contributory infringement of plaintiff's exclusive rights to the Copyrighted Images as set forth in Section 106 of the Act, plaintiff has incurred damages, and requests an award of plaintiff's actual damages, and defendants' profits in excess of plaintiff's actual damages, plus the reasonable attorneys' fees and costs incurred in this action. Plaintiff may also elect to recover two statutory damage awards. Defendants' acts entitle plaintiff to an enhanced statutory damage award of up to \$150,000 pursuant to 17 U.S.C. § 504(c)(2)



**THIRD CLAIM FOR RELIEF VIOLATION OF  
DMCA OF 1998, AS AMENDED  
17 U.S.C. §§ 1201-05**

165. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

166. Plaintiff always distributes its copyrighted Image, including the Copyrighted Image here, with embedded CMI which includes the title of the image, name of the author and copyright owner.

167. Defendants removed plaintiff's CMI, and copied, publicly displayed, and/or distributed the Copyrighted Images without the CMI.

168. Defendants created numerous unlicensed derivatives with no CMI.

169. Defendants falsely designated many of the unlicensed images as belonging to plaintiff.

170. Defendants systematically violated Section 1202 of the DMCA.

171. Defendants circumvented plaintiff's copyright protection system by enabling the right-click copy function.

172. Defendant did the forgoing with the intent to conceal the infringement.

173. Plaintiff seeks awards for each violation of Sections 1201 and 1202 of the DMCA in the sum of \$25,000 per violation, plus the reasonable attorneys' fees and costs incurred in this action.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment against defendants, and awarding plaintiff as follows:

1. restitution of defendants' unlawful proceeds in excess of plaintiff's compensatory damages;


2. compensatory damages in an amount to be ascertained at trial;
3. a statutory damage award, including all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), 504(c)(2));
4. an award of up to \$25,000 in statutory damages for each violation by defendant of the DMCA, 17 U.S.C. §§ 1201-02;
5. the reasonable attorneys' fees and costs incurred by plaintiff in this action (17 U.S.C. § 505);
6. pre- and post-judgment interest to the extent allowable; and,
7. such other and further relief that the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: November 5, 2023  
New York, New York

**GARBARINI FITZGERALD P.C.**

By:   
Richard M. Garbarini (RG 5496)